

Data Coordinators Conference

Legislative Update on Juvenile Records

2017



SB 1304

*Relating to
confidentiality,
sharing, sealing and
destruction of juvenile
records.*

- Contains revisions to Chapter 58, Family Code proposed by the Juvenile Records Advisory Committee.
- Limits access to JJS maintained by DPS to criminal justice agencies, military, certain federal entities, TJJD, OIO and DFPS.
- REPEALS restricted access.
- Authorizes sealing with or without an application with simpler eligibility criteria.
- Maintains DPS and TJJD for recidivism studies.



SB 1304

Effective Date

September 1, 2017

Applicability

- Records created before, on, or after the effective date



A low-angle photograph of the Texas State Capitol dome, showing its ornate architecture, columns, and the statue on top, set against a clear blue sky.

Confidentiality & Information Sharing



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Creation and Confidentiality of Juvenile Records

Law Enforcement Collection & Transmittal of Records of Children

Chapter 58, Subchapter A, FC

Renames **Subchapter A** to better describe the subject of the statute.

Amends §58.001, FC

- New section title clarifies applicability to the duties of law enforcement regarding juvenile records.
- Law enforcement's duty to forward info for inclusion in JJIS (including prints) to DPS on a child taken into custody or DESTROY if not referred to juvenile court w/in 10 days is **UNCHANGED**.

Repeals § 58.001(b), FC

- Removes unnecessary reference to LEA record sharing addressed elsewhere in Ch. 58.



Fingerprints and Photographs of Children

Juvenile Board Destruction Audit

Amends §58.002 (b), FC

- A juvenile board may conduct an annual audit on LEA destruction of records and fingerprints of cases not referred under §58.001.
- If audit shows certification to be false, the person is subject to perjury prosecution.

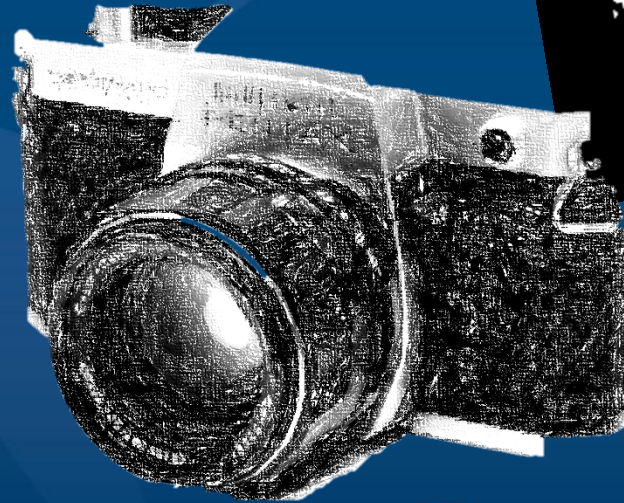


Fingerprints and Photographs of Children

Non-Custodial Referrals

Amends §58.002(c), FC

Parental consent is not required to photograph or fingerprint a child who has been referred, but is not in custody.



Fingerprints and Photographs for Comparison

Use of JPD Photographs for Investigation

Amends §58.0021(b), FC

- Law enforcement may now obtain an existing photograph from a juvenile probation department:
 - With **probable cause**
 - Photo will be of **material assistance** in an investigation.
- As an **OPTION** instead of taking a child into temporary custody to take a photo.



Sealing of Records

Repeals §58.003, FC

- Sealing moved to new Subchapter C-1



Redaction of Victim's Personally Identifiable Info

Non-Redacted Info to Attorney

Amends §58.004, FC

- Creates an exception to allow sharing of non-redacted victim information with:
 - Attorney representing child in a Title 3 proceeding
 - Attorney representing other person in juvenile or criminal proceeding arising from same incident



Confidentiality of Facility Records

Exceptions to Confidentiality

Amends Section 58.005, FC

- Creates confidentiality exceptions for records in the possession of:
 - TJJD or contract facility
 - Public or private agency or institution having custody under juvenile court order, including a facility operated by or under contract with juvenile board.

Not just treatment records --applies to all records and info from which a record could be generated.

- *No longer includes entity providing supervision by arrangement of juvenile court.*



Confidentiality of Facility Records

Exceptions – Inspection, Copying, Maintenance

Amends §58.005 (a-1) and (d), FC

- Authorizes the disclosure of facility records only to:
 - Professional staff or consultants
 - Judge, probation officers, staff of juvenile court
 - Attorney for child
 - Govt. agency, if required by law
 - Person or entity to whom child referred for services, w/a confidentiality agreement
 - TDCJ and TJJD for statistical purposes
 - Permission from juvenile court, w/ legitimate interest , (i.e. court order)
 - As required by 15.27 CCP



Interagency Sharing of Educational Records

Juvenile Service Providers

Amends §58.0051(2)(C), FC

- Reflects that the Department of Family and Protective Services is now separate from HHSC.



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Health and Human
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Texas Department of Family
and Protective Services



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Interagency Sharing of Non-Education Records

Multisystem Youth Disclosures

Amends §58.002(b), FC

- Upon request, JSP must share with another JSP the personal health info or history of governmental services, including
 - Identity records
 - Medical and dental records
 - Assessment or diagnostic test results
 - Special needs
 - Program placements
 - Psychological diagnoses
 - Other related records or information



Interagency Sharing of Non-Educational Records

Sharing Protocols & Multi-System Youth

Amends §58.0052 (b-1), FC (1 of 2)

- Requires TJJD and DFPS to coordinate and develop sharing protocols for multi-system youth and any other information necessary to
 - identify and coordinate provision of services and prevent duplication
 - enhance rehabilitation
 - improve and maintain community safety



Interagency Sharing of Non-Educational Records

Foster Care Services & Juvenile Justice Entities

Amends §58.0052 (b-1) and (b-2), FC (2 of 2)

- Requires DFPS (or certain contractors) to share information necessary for community safety and for providing services to a youth who is/was:
 - DFPS conservatorship (temp or perm)
 - Subject of family-based safety services
 - Reported as alleged ANE victim to DFPS
 - Perpetrator or victim that DFPS found RTB for ANE

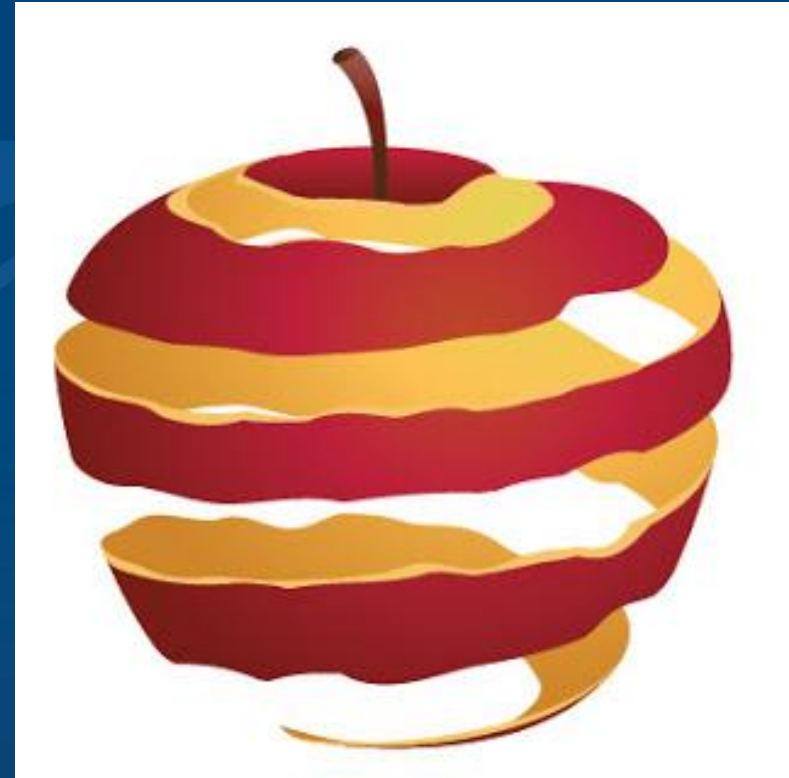


Destruction of Certain Records

No Probable Cause

Repeals §58.006, FC

- Repeals no probable cause destruction of records
- Moved to **new** §58.263



Confidentiality of Probation Department, Prosecutor and Court Records

Confidentiality Exceptions

Amends §58.007, FC

- Clarified that only an attorney representing a party in the Title 3 proceeding can have access
- Allows disclosure to person/entity child referred to for treatment with a written confidentiality agreement



Confidentiality of Probation Department, Prosecutor, and Court Records

Confidentiality Exceptions

Amends §58.007, FC

- Juvenile may access to **prepare motion for sealing** – moved from 58.210
- If child reported missing by parent, information may be forwarded and disseminated by TCIC/NCIC
- Prosecutor may have info to offer into evidence in punishment phase of criminal proceeding
- **Made clear if sealed, prosecutor cannot access**
- Repeals Sections (c),(d), (e), (f)



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Confidentiality of Law Enforcement Records

Records Maintenance

Amends §58.007(b) and (c), FC

- LEA records:
 - Maintained separate from adult records (*paper and electronic*)
 - Kept on a local basis only and not sent to state or federal depository except as under Ch. 58.
 - TJJD to TDCJ determinate sentence transfers are sent to central state or federal depository for adult records;
 - Records relating to missing children are forwarded to TCIC/NCIC

Additional Repeals

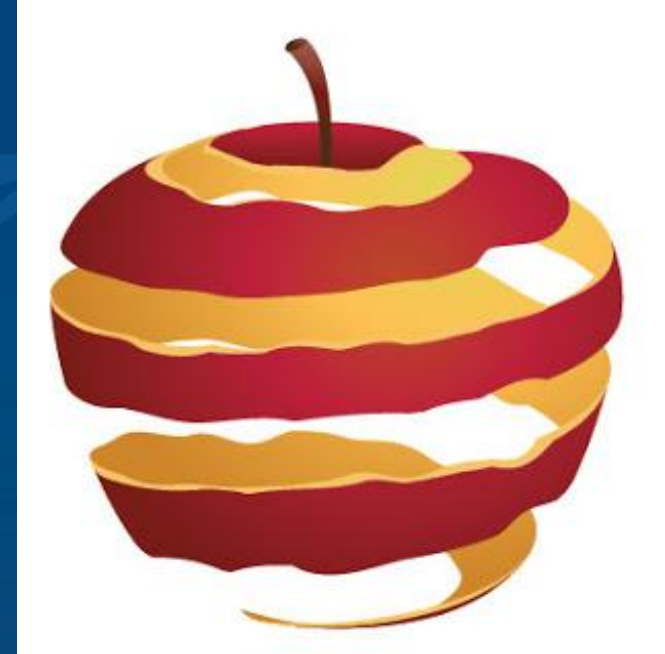
Records Maintenance and Sharing

Repeals §58.0071, FC

- Spring cleaning destruction moved to Sub C-1.

Repeals §58.00711, FC

- Removed provisions on confidentiality of justice and municipal records duplicated in Art. 45, CCP.



Confidentiality of Law Enforcement Records

Inspection, Copying, Maintenance

Amends §58.008 (d), FC

- May be inspected or copied by:
 - Juvenile justice agency
 - Criminal justice agency
 - Child*
 - Parents*
- * *Must redact others' info before sharing*



FC 58

Effective 9/1/17



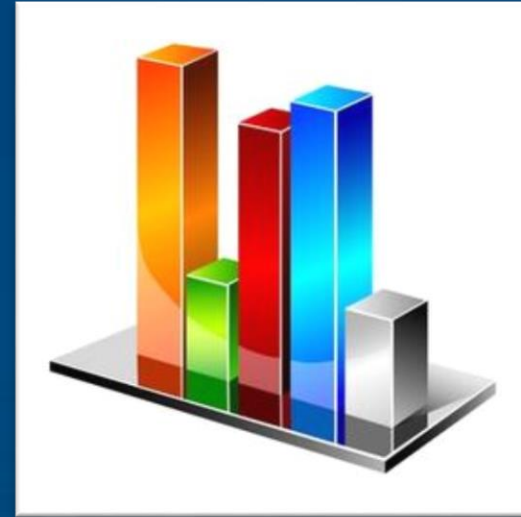
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Dissemination of JJ Information by TJJD

Research and Statistical Data

Renumbers §58.009, FC (formerly §58.0072)

- Authorizes TJJD to share data with a person working on research or statistical project
- Must have specific confidentiality agreement and processes in place to assure confidentiality
- TJJD has discretion to provide information – TJJD must approve
- Reflects DFPS and HHSC as separate agencies



A low-angle photograph of the Texas State Capitol dome, showing its ornate architecture, columns, and the statue on top, set against a clear blue sky.

Juvenile Justice Information System



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Juvenile Justice Information System

Subchapter B

Amends §58.102(c), FC

- Clarifies that DPS may only collect, retain, and share information as provided by Chapter 58.



Juvenile Justice Information System

Reporting

Amends §58.104(a) and (b), FC

Requires the following to be reported to DPS for inclusion in the JJIS:

- Date of termination of probation supervision
- Date of termination of deferred prosecution supervision
- Date of discharge from commitment



Dissemination of Confidential Info in JJIS

DPS Sharing

Amends 58.106 (a), fC

- DPS can share JJIS data only with:
 - Military, with permission of juvenile
 - Criminal justice agency
 - Noncriminal justice agency if authorized by federal law or executive order to receive
 - Juvenile justice agency
 - TJJD
 - Office of Independent Ombudsman
 - Court exercising jurisdiction over a juvenile
 - DFPS for background checks for placement purposes

Repeals 58.106 (a-1), FC

- prohibits release to non-criminal justice agencies

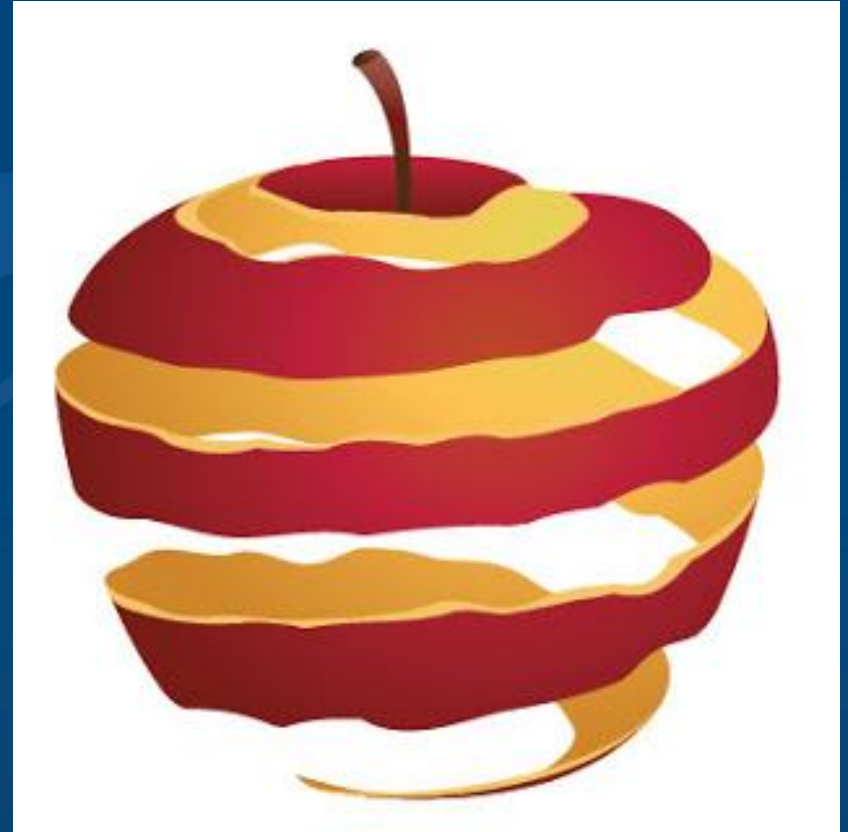


Automatic Restriction of Access

Former Subchapter C

Repeals §§58.201 - 58.211

- New “sealing without application” builds on the automatic sealing provisions enacted in 2015.
- Renders restricted access process unnecessary.





Sealing and Destruction of Juvenile Records



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Sealing and Destruction of Juvenile Records

New Subchapter C-1

Adds new Subchapter C – 1, FC

- NEW subchapter contains statutes relating to procedures for sealing and destruction of juvenile records.



Definitions

Sealing and Destruction

Amends 58.251, FC

- **Record** - All documentation related to a **juvenile matter**, including information contained in that documentation.
 - Held by a juvenile probation department, court, prosecutor, law enforcement or other juvenile service provider.

Juvenile Matter. A referral and all related court proceedings and outcomes.

Electronic Records. An entry in a computer file, microfilm, or other electronic storage medium

Physical Record. A paper copy of a record

Exempted Records

Sealing and Destruction

Amends §58.252, FC

The following records are not subject to Subchapter C-1 :

- DPS or local law enforcement:
 - Gang Database
 - Sex Offender Registry
- Records maintained by TJJD for statistical and research purposes





Sealing



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Sealing Without Application

Delinquent Conduct

Amends 58.253, FC

Entitled to sealing of DC/CINS with no application:

Age

- 19

Offense Criteria

- Misdemeanor or Felony Referrals -- **No Adjudication**
- Misdemeanor -- **Adjudication**

Ineligible History

- No Felony Adjudications
- No pending charges (adult/juvenile)
- No adult Class B or higher conviction
- Never certified as adult



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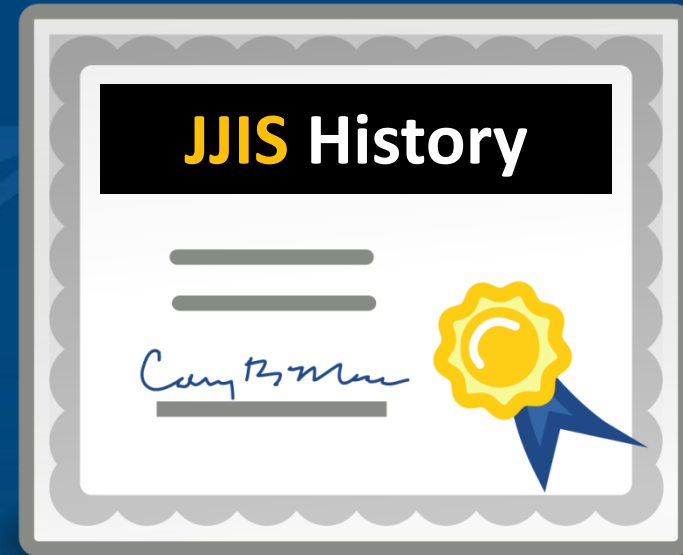
Certification of Eligibility

Sealing Without Application

Adds §58.254, FC

Appears INELIGIBLE

- JPD contacts DPS within 15 days of receiving notice;
- If determine not eligible, JJIS updated; no further action taken.
- ***If ELIGIBLE***, JPD has 30 days from date of determination to give court the info on referrals and outcomes;
- Court shall seal within 60 days.



Certification of Eligibility

Sealing Without Application

Amends §58.254, FC

- DPS will certify to JPD that records appear eligible for sealing;
- Within 60 days, JPD will provide court notice and list of all referrals and outcomes;
- Court shall order sealing within 60 days.



Sealing CINS Conduct

Sealing Without Application

Adds §58.255, FC

Only CINS Referral History

- Entitled to have all records sealed if:
 - At least 18
 - No delinquent conduct referrals
 - No adult felony conviction or pending adult charges (any level)
- JPD identifies and gives court notice
- Court shall order sealing within 60 days



Application for Sealing Records

Initiated by Application

Adds §58.256, FC

- Regardless of eligibility for sealing without application, juvenile can apply for sealing.
- **No court/filing fee** may be charged
- Application must contain certain information set out in statute



Sealing With Application

Adds §58.256 (c) – (e), FC

- Court has discretion to seal if:
 - 18 years of age
 - If not 18, 2 years since final discharge on every matter referred
 - No pending delinquent conduct matters
 - No adult felony convictions
 - No pending adult jailable misdemeanors or felony charges
 - Never certified and no determinate sentence
 - Not under a duty to register as sex offender
 - Discharged from TJJD (or Travis)
- Court can seal with or without hearing under §58.257



Hearing on Application

Procedural Aspects

Add §58.257, FC

- Held no later than 60 days after court receives application
- Must give reasonable notice to
 - Person who is subject of records and attorney (if any)
 - Prosecutor
 - All entities named in application as having records
 - Any individual or entity if person or prosecutor has requested their presence



Order Sealing Records

Procedural Aspects

Adds §58.258, FC

- All adjudications vacated
- Proceedings dismissed and treated for all purposes as if they never occurred;
- Clerk seals court records, including those in clerk's case management system;
- Clerk sends copy of Order to all entities listed in the order – within 60 days;



Actions Taken Upon Receipt of Order

DPS

Adds §58.259, FC

- Within 61 days, DPS must:
 - Limit access to records to only TJJD for research and statistical studies
 - Destroy other records, including DNA
 - Send written verification to juvenile court



Actions Taken Upon Receipt of Order

TJJD

Adds §58.259(a)(2), FC

- Within 61 days, TJJD must:
 - Seal all records other than those exempt under 58.252 (records for statistical purposes)
 - Send written verification to juvenile court



Actions Upon Receipt of Order

Agency Providing Supervision or Services

Adds §58.259(a)(3), FC

- Within 61 days, other agency or entity that had custody of or provided supervision of or services to juvenile under court order must:
 - Seal all records
 - Send written verification to juvenile court



Actions Taken Upon Receipt of Order

Others

Adds §58.259(a)(4), FC

- Within 61 days, any other entity receiving order must:
 - Send all recs to court
 - Delete all index references
 - Send written verification of deletion to juvenile court
- Includes prosecutor and law enforcement



Sealed Records

Physical or Electronic Records

Adds §58.259(b), FC

- Records are considered sealed if:
 - Not destroyed and
 - Stored in a manner that allows access only by the custodian of records for the entity possessing the records



Sealed Records

Unable to Comply

Adds §58.259(d), FC

- If information incorrect or insufficient, entity must notify court within 30 days
- Court to take necessary action to correct, including getting additional information



Actions Taken Upon Receipt of Order

No Records

Adds §58.259(e), FC

- If entity has no records, shall provide written verification of that fact to court within 30 days



Sealed Records

Later Inquiry - Records Do Not Exist

Adds §58.259(c), FC

- After receipt of a sealing order, an entity must respond that no records relating to the person or matter exists.



Inspection and Release of Sealed Record

Unsealing

Adds §58.260, FC

- Subject of order can ask court to unseal for any reason
- Prosecutor can ask court to unseal to review for possible use in:
 - Capital prosecution or
 - For enhancement under Section 12.42, Penal Code
- Court, TDCJ, TJJD can request for sex offender screening purposes



Effect of Sealing Record

Subject of Juvenile Record

Adds §58.261, FC

- Not required to state was subject of juvenile matter:
 - in any proceeding
 - on housing application
 - on employment application
 - on admission application
 - on licensure application
 - on application for other public or private benefit
- Info in records, fact they once existed, or denial cannot be used against person in any manner
- Subject cannot waive the protected status of the records

Information to Child

JPD Duty to Explain

Adds §58.262, FC

- **On referral**, JPD employee shall give the child and parent written explanation of sealing process and a copy of law;
- **On final discharge** (or last official action if no adjudication), probation officer or TJJD official, shall give a written explanation of eligibility for sealing and a copy of the law
- Law gives specific info that must be included
- TJJD to adopt rules to implement





Sealing Orders

Juvenile Law Sections Forms

- Sample Sealing Orders and Verification Forms will be developed.
- Incorporates the processes outlined in **SB 1304** enacted during the 85th Session.
- Sample forms will be available online at the Juvenile Law Section website www.juvenilelaw.org.

Note -- Should be reviewed by local juvenile court prosecutor or legal counsel for sufficiency and adapted for the county's particular situation or drafting preferences.

Sealing

Not Included and 86th Session Cleanup

- Specialty court sealing
- Sealing for not true findings





Records Destruction



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Destruction of Records

No Probable Cause

Adds §58.263, FC

- If no probable cause found at intake or by prosecutor, court shall order records destroyed
- Moved from 58.006



Permissible Destruction

Spring Cleaning

Add §58.264, FC

- At age 18 if CINS is most serious conduct referred, whether or not adjudicated
- At age 21 if misdemeanor must serious conduct adjudicated or if referred for felony or misdemeanor and not adjudicated
- At age 31 if adjudicated for felony
- Probation, prosecutor, law enforcement, with permission of agency head



Permissible Destruction

Spring Cleaning



Adds §58.264, FC

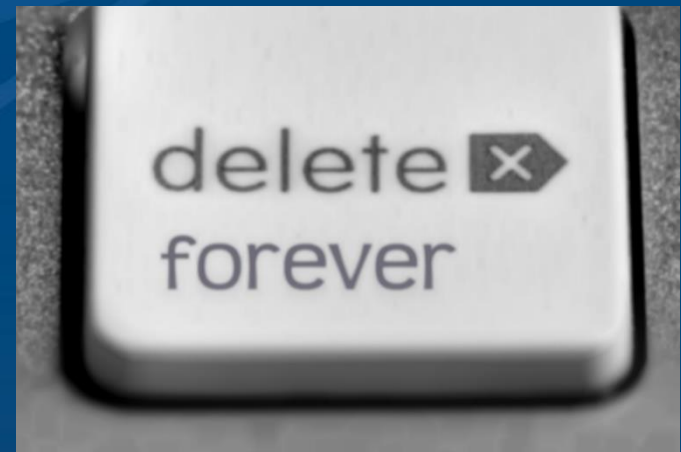
- Applies to all records, no matter when created
- Clarified court can never fully destroy records
- Clarified that if an entity converts paper records to electronic, destroying paper records while keeping electronic does not equal “destruction” under statute
- Does not authorize destruction of records maintained by TJJD for research and statistical purposes

Juvenile Records Not Subject to Expunction

Clarification

Add §58.265, FC

- Juvenile records are not subject to an order of expunction issued by any court;
- Expunction statutes apply to criminal records of children in justice and municipal court;



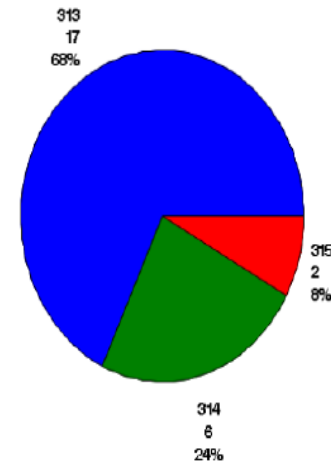
Report to Legislature

TJJD Enabling Laws

Adds 203.019, HRC

- Moved from Section 58.112 FC to Human Resources Code Section 203.019

TJJD Commitments by Court
April 2017



HRC 203.019

SB 1304

Effective 9/1/17



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Related Bills of Interest



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HB 3705

Relating to local juvenile justice information systems.

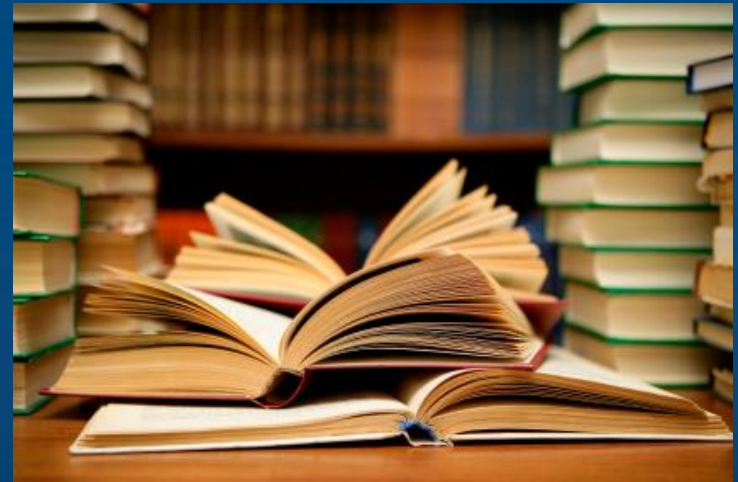
- Allows JCMS info to be used to manage juveniles in juvenile facilities.
- Adds social info for diagnosis, evaluation, or treatment or for making a referral for treatment in JCMS.
- Authorizes sharing with partner agencies.
- Courts and clerks may now access info in JCMS along with the probation department and juvenile facilities.
- Updates encryption requirement.



HB 7

Relating to child protective services suits by the Department of Family and Protective Services.

- Requires juvenile service providers to disclose personal health information and coordinate government services under information-sharing protocols set by DFPS and TJJD.



HB 932

Relating to the collection of information concerning the number of juvenile offenders committed to TJJD who have been in foster care.

- Requires the collection and tracking of data on the number of foster care youth committed to TJJD.
- Requires DFPS to share data with juvenile probation departments.
- Requires TJJD to submit a report in even-numbered years to the Governor and legislative leadership.



HB 1569

Relating to the disclosure to public schools of certain records of students placed in residential facilities.

- Requires a residential facility (other than a juvenile pre-adjudication or post-adjudication secure correctional facility) to **disclose** to a school district or open-enrollment charter school **records** relating to the student's educational services, needs and behavioral history.



SB 1096

Section 52.011

DUTY OF LAW ENFORCEMENT OFFICER TO NOTIFY PROBATE COURT



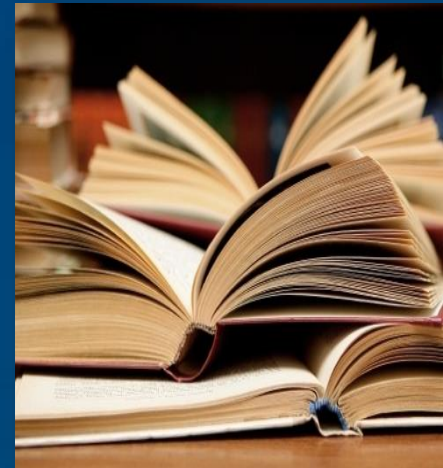
- *Adds Section 52.011, Family Code*
- Creates a **searchable database** that is available to law enforcement.
- Requires law enforcement to **notify the probate court** upon taking custody of a child who is a ward under guardianship.
- Requires **notice** as soon as practical but not later than **one working day**.

SB 1304

Statewide Implementation & Consistency Goals

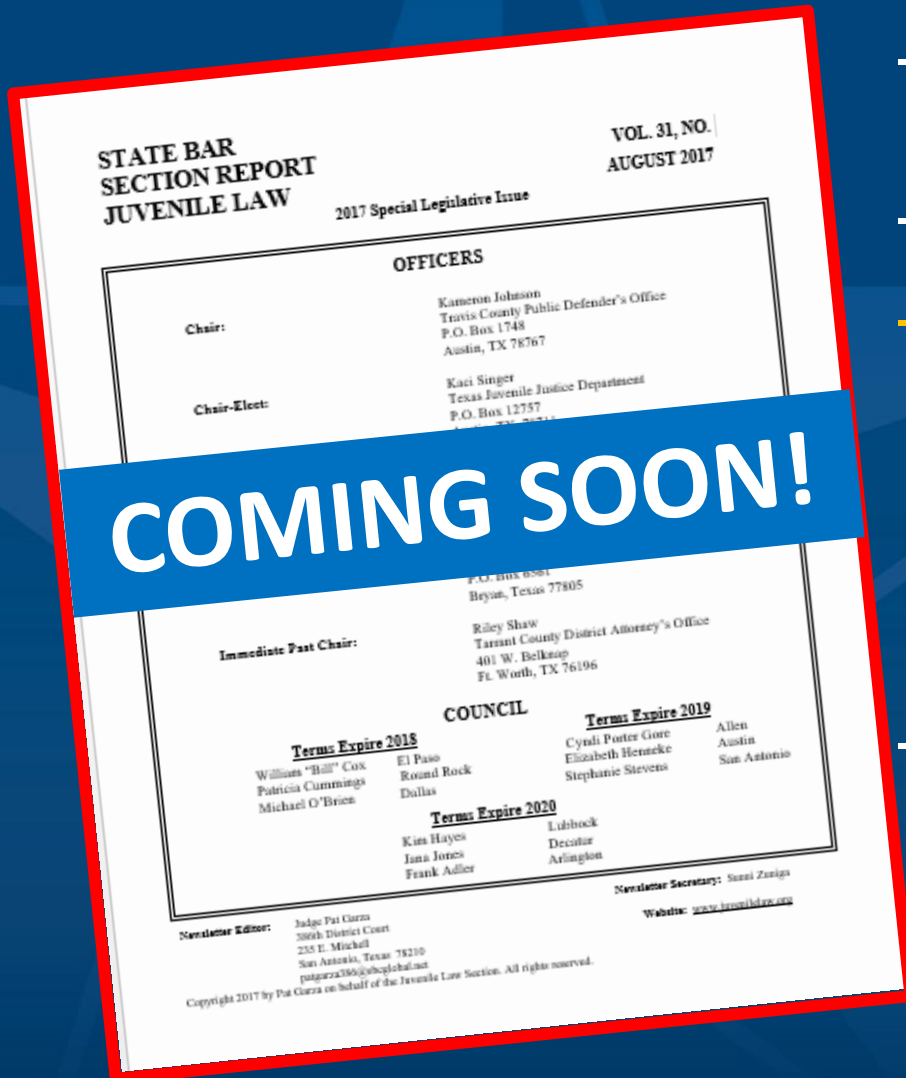
Looking Forward -- SB 1304

- Implementation Recommendations
- Disposition Index
- **Update** - Juvenile Records in Texas
- **Update** - Juvenile Records Brochure
- **Update** – Sample Forms [*Juvenile Law Section*]
- Training & Webinar Development



2017 Special Legislative Issue

- State Bar Juvenile Law Section Report, Special Legislative Issue.
- Special feature on **SB 1304**.
- **TJJD Legal Education & Technical Assistance** and guest contributors prepared useful summaries and intent history of key juvenile justice bills enacted during the 85th Legislative Session.
- Available **online** at www.juvenilelaw.org and www.tjjd.texas.gov



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